

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of A.L.B., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

RHONDA GREEN,

Respondent-Appellant.

UNPUBLISHED

June 21, 2005

No. 258841

Alcona Circuit Court

Family Division

LC No. 03-002279-NA

In the Matter of L.G.G., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

RHONDA GREEN,

Respondent-Appellant.

No. 258842

Alcona Circuit Court

Family Division

LC No. 03-002280-NA

In the Matter of L.G.G., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CHRIS GREEN,

Respondent-Appellant.

No. 259197

Alcona Circuit Court

Family Division

LC No. 03-002280-NA

Before: Owens, P.J., and Cavanagh and Neff, JJ.

PER CURIAM.

In Docket No. 258841, respondent-mother Rhonda Green appeals as of right from the trial court's order terminating her parental rights to the minor child, A.B. In Docket Nos. 258842 and 259197, respondent-mother and respondent-father Chris Green, respectively, appeal as of right from the trial court's order terminating their parental rights to the minor child, L.G. In each case, the court terminated respondents' parental rights under MCL 712A.19b(3)(j). We affirm.

Respondents argue on appeal that the termination proceedings were void ab initio because the trial court failed to authorize the petitions upon a finding of probable cause. Respondents therefore contend that the trial court lacked jurisdiction to remove the children from their custody, place them in foster care, proceed with a jury trial on the question of jurisdiction, and terminate their parental rights. We find no merit to these issues.

The record discloses that petitioner filed petitions alleging that respondent-father sexually abused the children and that respondent-mother was aware of the abuse and failed to protect the children. The record also discloses that a preliminary hearing was held on the petitions. "A preliminary hearing is the formal review of the petition when the judge or referee considers authorizing the petition and placing the case on the formal calendar." *In re Hatcher*, 443 Mich 426, 434; 505 NW2d 834 (1993). MCR 3.962(B)(3) states that the court may

[a]uthorize the filing of the petition if it contains the information required by MCR 3.961(B), and there is probable cause to believe that one or more of the allegations is true. For the purpose of this subrule, probable cause may be established with such information and in such a manner as the court deems sufficient.

Contrary to respondents' contention that the trial court never made a probable cause determination, the trial court expressly stated in its orders that there was probable cause that one or more allegations in the petitions were true, and it authorized the petitions. "[I]t is axiomatic that a court speaks through its orders." *People v Kennedy*, 384 Mich 339, 343; 183 NW2d 297 (1971). Moreover, MCR 3.962(B)(3) authorizes the court to consider "such information . . . as the court deems sufficient" in making this determination. In this case, the petitions included allegations of sexual abuse by respondent-father, and thus sufficiently alleged a statutory basis for the court's jurisdiction. MCL 712A.2(b)(2). Further, the court was presented with information that respondent-father admitted sexually abusing the children to sheriff's deputies and that respondent-mother acknowledged being aware of the abuse but did not do anything about it because she wanted to keep the family together. There was a sufficient basis for the trial court's probable cause determination. The court's jurisdiction to make that determination was not dependent on the correctness of the determination made. See *In re Hatcher*, *supra* at 438-439, quoting *Jackson City Bank & Trust Co v Fredrick*, 271 Mich 538, 545-546; 260 NW2d 908 (1935) (citation omitted).

Respondents also argue that because the petitions were not properly authorized, the trial court erred by removing the children from their custody, by denying visitation, and by not

initially placing the children with relatives. In light of our determination that the court properly authorized the petitions upon a finding of probable cause, these claims necessarily fail.

Additionally, MCL 712A.13a(5) provides that when a petition alleges abuse, the court “shall not leave the child in or return the child to” the home without first ensuring that there is no risk of harm. Here, the court had a basis for concluding that there was a risk of harm to the children and, therefore, did not err by placing them in foster care pending further proceedings.

Nor did the trial court err by denying respondents parenting time. Where, as here, a petition is filed requesting termination of parental rights, parenting time is “automatically suspended” and “remains suspended at least until a decision is issued on the termination petition,” absent a finding by the court that parenting time will not be harmful. MCL 712A.19b(4). Here, the court was unable to make a determination that parenting time would not be harmful and, accordingly, properly suspended parenting time.

Finally, respondents challenge the trial court’s decision to place the children in foster care rather than with relatives. MCR 3.965(C)(2) provides that if the children are not returned to the home, they shall be “placed in the most family-like setting available” consistent with their needs. At the preliminary hearing, attorneys for both petitioner and the children explained on the record that the children did not want to go to their grandparents’ home because they were afraid for their safety. Nonetheless, the court emphasized its intention to place the children with relatives if possible and ordered an investigation of relatives who might be willing to care for the children, including the grandparents. We find no error.

Affirmed.

/s/ Donald S. Owens
/s/ Mark J. Cavanagh
/s/ Janet T. Neff